IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.Revision No. 503 of 1993
Date of Decision: 18.7.2007

Kashmir Singh.

..... Petitioner through
Shri B.R.Gupta, Advocate.

Versus

State of Haryana.

..... Respondent through
Ms.Shalini Attri, Assistant
Advocate General, Haryana.

CORAM: HON'BLE MR.JUSTICE MAHESH GROVER

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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Mahesh Grover,J.

This revision petition has been directed against judgment dated 30.7.1993 of the Additional Sessions Judge, Hisar vide which the appeal of the appellant preferred against judgment dated 15.11.1991 passed by the Judicial Magistrate Ist Class, Tohana was dismissed and his conviction & sentence for the offences under Sections 279, 337, 338 and 304-A of the I.P.C. were upheld.

On 12.12.1985 at about 8.00 P.M, the tractor, being driven by the petitioner rashly and negligent, allegedly hit against a jeep, which resulted in the death of its driver and injuries to other occupants.

The police, after completing the investigation, submitted a challan and the Court, thereafter, charge sheeted the petitioner for having committed an offence under Sections 279, 337,338 and 304-A of the I.P.C.

The trial Court, on appraisal of material before it, convicted and sentenced the petitioner as under:-

For offence under under Section 279 of the IPC	-	to undergo Rigorous Imprisonment for half year and a fine of Rs.500/- and in default of payment of fine, to further undergo Rigorous Imprisonment for 1-1/2 months.
For offence under under Section 337 of the IPC	-	to undergo Rigorous Imprisonment for half year and a fine of Rs.250/- and in default of payment of fine, to further undergo Rigorous Imprisonment for 1-1/2 months.
For offence under under Section 338 of the IPC	-	to undergo Rigorous Imprisonment for one year and a fine of Rs.500/- and in default of payment of fine, to further undergo Rigorous Imprisonment for 1-1/2 months.
For offence under under Section 304-A of the IPC	-	to undergo Rigorous Imprisonment for one year and a fine of Rs.1000/-and in default of payment of fine, to further undergo Rigorous Imprisonment for three months.

All the substantive sentences were, however, ordered to run concurrently.

As noticed above, the appeal filed by the petitioner against his conviction and sentence was dismissed by the Additional Sessions Judge, Hisar.

In the present revision petition, learned counsel for the petitioner has contended that there are a number of discrepancies in the statements of PW3-Sat Narain and PW8-Satish Kumar, who were stated to be the occupants of the jeep at the time of the accident, with regard to the manner of transportation of the deceased to the hospital and this causes a

doubt regarding their presence at the spot. That apart, all the occupants of the jeep including the deceased, were drunk and in fact, it was the negligence of the jeep driver that the accident had occurred.

On the other hand, learned counsel appearing for the State controverted the contention of the learned counsel for the petitioner and submitted that the Courts below have rightly convicted and sentenced the petitioner.

Having thoughtfully considered the rival contentions and perused the record, I find that there is cogent evidence on record to establish the culpability of the petitioner. PW12-Dr.V.K.Gupta, who conducted the post mortem on the dead body, categorically stated in his cross-examination that no alcoholic smell was present in the mouth of the deceased. Therefore, the plea of the petitioner that the accident was caused on account of the deceased being drunk is belied. The other discrepancies, such as the manner in which the dead body of the deceased was transported to the hospital are of no consequence and do not enhance the case of the petitioner.

Having regard to the facts of this case and evidence on record, I do not find any merit in the revision petition which deserves to be dismissed.

At this stage, learned counsel for the petitioner contended that the occurrence is of the year 1985 and on the date of the accident, the petitioner was 28 years of age and he has never been involved in any other offence thereafter. He prayed that a lenient view may be taken and the petitioner may be released on probation.

The prayer of the learned counsel for the petitioner has been opposed by the learned Assistant Advocate general by contending that it was a case where there is cogent evidence on record to show that the petitioner was guilty of having caused the death of the jeep driver and, therefore, no leniency should be shown to him.

After considering the respective submissions of the learned counsel for the parties, I am of the view that it is a fit case where the concession of probation should be extended as the petitioner has faced the consequences of the criminal proceedings for the last more than 21-1/2 years and there is nothing on record to show that he has been involved in any other criminal activity during this period. Moreover, he must be around 50 years old by now.

Accordingly, the revision petition is disposed of in the following terms:-

(1)The conviction of the petitioner shall remain intact.

(2) Instead of sentence of imprisonment, he is directed to be released on probation of good conduct under Section 4 of the Probation of Offenders Act,1958 for a period of one year subject to the condition that he deposits a sum of Rs.30,000/- before the Court within a period of three months from today. During the aforesaid period of one year, he will maintain peace & be of good conduct and will not indulge in any criminal activity. He will furnish the requisite bonds before the Chief Judicial Magistrate, Hisar along with the deposit of aforestated amount.

(3) The amount so deposited shall be disbursed by the Court to the legal heirs of the deceased as compensation after due enquiry and verification.

(4) If the petitioner fails to deposit the aforesaid amount within the stipulated period, the substantive sentence as awarded by the Courts below shall stand revived and he shall be required to undergo the remaining part of the sentence after cancelling his bail bonds.

July 18,2007 **(Mahesh Grover)**
"SCM" **Judge**